SUPREME COURT OF THE UNITED STATES.

No. 279.

THE UNITED STATES, APPELLANTS,

vs.

HENRY S. GILLETT AND JOHN S. GILLETT.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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Be it remembered that on this 28th day of December, A. D. 1865, the following transcript was filed in the office of the clerk of the supreme court of the Territory of New Mexico, in words and figures following, to wit:

1 UNITED STATES OF AMERICA,
Territory of New Mexico, Third Judicial District:

In the district court for said district and territory.

Be it remembered that on the twenty-third day of September, one thousand eight hundred and sixty-five, Theodore D. Wheaton, esq., district attorney of the United States for the Territory of New Mexico, filed with the clerk of the United States district court for said district and Territory a libel, which said libel is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, Third Judicial District:

In the district court of the United States for said Territory and district at the November term, A. D. 1865.

Libel.

UNITED STATES

vs.

LOTS No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, in block No. 33; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., thereon; lot No. 38, in block No. 17, with house and corral thereon, situate in the town of Franklin, El Paso county, State of Texas. Also a certain house and lot about five hundred yards east from Fort Bliss, El Paso county, Texas, situate on the Main Overland road, the property of Henry S. Gillett and John S. Gillett.

2 Be it remembered, that Theodore D. Wheaton, United States district attorney for the Territory of New Mexico, who prosecutes for the United States, comes before the honorable court at the day and date aforesaid, and on the part of the United States shows to the honorable court, and gives to the honorable court to understand and be informed that Henry S. Gillett and John S. Gillett, of the county of El Paso, in the State of Texas, within the jurisdiction of the district court aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-two, then and there citizens of the United States, and rightfully subject to the authority and laws thereof, were seized and possessed of certain town lots, houses, &c., lying and being situate in the county of El Paso and State of Texas, and within the jurisdiction of this honorable court, known as lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c.,

thereon. Lot No. 38 in block No. 17, with house and corral thereon, situate in the town of Franklin, county of El Paso, State of Texas. Also a certain house and lot about five hundred yards east from Fort Bliss, in the county of El Paso and State of Texas, situated on the Main Overland road; the building previously occupied as a retail grocery and fandango house; said property mentioned and referred to in the information herein laid known as the property of Henry S. Gillett and John S. Gillett, which said real estate and property since that time and after the committing of the several unlawful acts hereinafter alleged to have been committed by the said Henry S. Gillett and John S. Gillett, has been seized by the United States marshal for said Territory of New Mexico, and has still in his custody
3. and possession. The libellant would further propound and show to the honorable court, that the said Henry S. Gillett and John S. Gillett, afterwards, to wit, on the day and year first aforesaid, and also on divers others days and times, from that time to the filing of this libel, being then and there citizens of the United States and subject to the authority and laws thereof, being engaged in an armed rebellion against the government of the said United States, commenced and set on foot by one Henry S. Sibley, have not ceased to countenance said rebellion, nor have they returned to their allegiance to the said United States, although public warning and proclamation has been duly given and made by the President of the United States to that effect, as by reference to the same date, the twenty-fifth of July, in the year of our Lord one thousand eight hundred and sixty-two, will more fully appear. And the libellant would further show that the said Henry S. Gillett and John S. Gillett, afterwards, to wit, on the day and year first aforesaid, and within the jurisdiction, of the court aforesaid, having been engaged in aiding and abetting said armed rebellion, by buying, selling, freighting, and trafficking to and with, and by furnishing counsel, personal service and supplies of all kinds to the persons then employed, have not ceased to aid and assist said rebellion, nor have they returned to their allegiance to the said United States, although public warning and proclamation has been given and made by the President of the said United States as aforesaid.

The libellant would further show and propound to the honorable court, that the said Henry S. Gillett and John S. Gillett, of the county and State aforesaid, on the day and year first aforesaid, and within the jurisdiction of this honorable court, and during other days and times from thence hitherto having been engaged in a certain other armed rebellion against the government of the said United States, to wit, an armed invasion of the said Territory of New
4 Mexico, consisting of some two thousand men, and afterwards set on foot and carried on by the so-styled Confederate States of America, have not ceased to continue said rebellion, nor have they returned to their allegiance; warning and proclamation has been duly given and made as aforesaid.

And the libellant would further propound and show to the honorable court, that the said Henry S. Gillett and John S. Gillett, after-

wards, to wit, on the day and year first aforesaid, at the district aforesaid, and within the jurisdiction of this honorable court, being engaged in aiding and abetting the said rebellion last aforesaid, with personal service, counsel, information, and supplies of all kinds, have not ceased from thence hitherto to aid and abet said last-named rebellion, nor have they returned to the allegiance to said United States, although public warning and proclamation has been duly given and made by the President of the United States to that effect as aforesaid.

All of which acts and doings of the said Henry S. Gillett and John S. Gillett, being contrary to the statutes of the United States in such cases made and provided, whereby and by force of the said statutes, the said above-described real estate and property has become justly forfeited to the United States.

And the libellant would further propound to the honorable court that a decree of condemnation and confiscation of right be entered against said above-described property, and that proceedings be had according to the act of Congress of the United States, approved July 17th, 1862; that process and proclamation be had, and a decree of sale ordered, and that such disposition be made of the proceeds thereof as to the honorable court may seem just and proper in the premises on the part of the United States.

(Signed) THEODORE D. WHEATON,
U. S. District Attorney.

And afterwards, to wit, on the day and year aforesaid, the clerk issued a monition, which monition is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Territory of New Mexico, ss*:

To the marshal of said Territory, greeting:

Whereas certain property known and described as follows, to wit, against the property of Henry S. Gillett and John S. Gillett, to wit:

The following described lots situate in the town of Franklin, El Paso county, Texas, viz:

Lots numbered 146, 147, 148, 149, 150, 151, and 152, in block numbered 32; lots numbered 138, 139, 143, 144, and 145, in block numbered 33; also lots numbered 88, 89, 91, and 92, in block numbered 16, with all the houses, corrals, and other buildings thereon.

Also a certain house and lot about five hundred yards east from Fort Bliss, in the county of El Paso and State of Texas, situate on the Main Overland road, the building previously occupied as retail grocery and fandango house; also lot 38 in block 17, with house and corral thereon, situate in the county of El Paso and State of Texas, and within the jurisdiction of the United States district court for the Territory of New Mexico, has been seized by the marshal of said Territory. And that on the 23d day of September, A. D. 1865, the hon. district attorney of the United States for said Territory, proceedings on the part of the United States filed in the

clerk's office of said district court a libel, stating and alleging that Henry S. Gillett and John S. Gillett, on the first day of March, A. D. 1862, were seized and possessed of the property above mentioned, and were so seized and possessed at the filing of the said libel; and that on the day and year last aforesaid, the said Henry S. Gillett and John S. Gillett, within the jurisdiction of the said district court, were engaged in an armed rebellion against the government of the United States, and have not ceased to continue said rebellion, nor have they returned to their allegiance to the United States, although proclamation and warning has been duly given. And that the said Henry S. Gillett and John S. Gillett, on the day and year last aforesaid, and within the jurisdiction of said district court, had been engaged in aiding and abetting said rebellion, and had not ceased so to aid and abet, and had not returned to their allegiance to the United States, although public proclamation and warning had been duly given.

Now, therefore, in the name of the President of the United States, we command you that by public notice to be published in the Santa Fe Gazette, a newspaper published in the town of Santa Fe, New Mexico, for not less than successive weeks, you do cause to be
7 notified all persons or parties who may be concerned or who may claim any interest in the above-mentioned property or know or have anything to say why the same should not be decreed to be forfeited to the United States and condemned and sold to answer the payment of said libel; and that you do especially summon the said Henry S. Gillett and John S. Gillett that, together with all other persons interested, to be and appear at the court house in the town of Mesilla in said third judicial district, on the 6th day of November, A. D. 1865, at 10 o'clock a. m., when and where said cause will be heard, and then and there to interpose their claims, and answer said libel and make allegations in that behalf.

Witness the Hon. Joab Houghton, associate justice supreme court Territory of New Mexico and presiding judge of the said
[SEAL.] third judicial district court, and the seal of said court, at Mesilla, N. M., this the 23d day of September, A. D. 1865.

(Signed) SAM'L J. JONES, *Clerk.*

Upon which monition is the following return, which is in words and figures following, to wit:

I hereby certify that I have served the within process by taking possession of the property therein described, and by giving due notice in the Santa Fe Gazette to all persons claiming to appear and interpose their claims and make their allegations in that behalf, on the 1st Monday the 6th day of November, A. D. 1865, at the U. S. district court for the 3d judicial district of New Mexico.

(Signed) ABRAHAM CUTLER,
U. S. Mar hal.

La Mesilla, N. M., Nov. 6, 1865.

8 And afterwards, to wit, at the November term of the United States district court for the third judicial district of the Ter-

ritory of New Mexico, begun and held at the court house in the town of Mesilla, county of Don Ana, and Territory of New Mexico, on the first Monday of November, A. D. 1865, to wit, on the sixth of November, A. D. 1865, and during the term of said court, to wit, on the 11th day of November, A. D. 1865, the said John S. Gillett filed his bond as such claimant; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, John S. Gillett, as principal, and Frank De Ryther and Francis Black, as his securities, are held and firmly bound unto the United States of America in the sum of two hundred and sixty dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of November, in the year of Lord one thousand eight hundred and sixty-five.

Whereas a libel has been filed in the district court of the United States of America for the third judicial district of the territory of New Mexico on the twenty-third day of September, A. D. 1865, in the year of our Lord one thousand eight hundred and sixty-five, by
9 Theodore D. Wheaton, esq., attorney of the United States for the Territory of New Mexico, against lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, and 145, in block No. 33; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., thereon; lot No. 38, in block No. 17, with houses and corrals thereon, situate in the town of Franklin, El Paso county, Texas. Also, a certain house and lot about five hundred yards east from Fort Bliss, El Paso county, State of Texas, situate on the Main Overland road; for reasons and causes set forth and mentioned in said libel, and praying that the same may be condemned as forfeited to the uses in said libel specified.

And whereas also, a claim has been filed in the said court by the said John S. Gillett as owner of said property.

Now therefore, the condition of this obligation is such, that in case the said John S. Gillett shall not support his said claim, if the said John S. Gillett, and the said Frank De Ryther, and Francis Blake, or either of them, or the heirs, executors or administrators of the said John S. Gillett, and the said Frank De Ryther, and Francis Blake, or either of them, shall pay all such costs as by reason of his failing to support his said claim he ought to pay, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) JOHN S. GILLETT. [SEAL.]
(Signed) F. DE RYTHER. [SEAL.]
(Signed) FRANCIS BLAKE. [SEAL.]

10 The penalty and sureties of the above bond are approved by me this, the 11th day of November, 1865.

(Signed) SAM. J. JONES, *Clerk.*

clerk's office of said district court a libel, stating and alleging that Henry S. Gillett and John S. Gillett, on the first day of March, A. D. 1862, were seized and possessed of the property above mentioned, and were so seized and possessed at the filing of the said libel; and that on the day and year last aforesaid, the said Henry S. Gillett and John S. Gillett, within the jurisdiction of the said district court, were engaged in an armed rebellion against the government of the United States, and have not ceased to continue said rebellion, nor have they returned to their allegiance to the United States, although proclamation and warning has been duly given. And that the said Henry S. Gillett and John S. Gillett, on the day and year last aforesaid, and within the jurisdiction of said district court, had been engaged in aiding and abetting said rebellion, and had not ceased so to aid and abet, and had not returned to their allegiance to the United States, although public proclamation and warning had been duly given.

Now, therefore, in the name of the President of the United States, we command you that by public notice to be published in the Santa Fe Gazette, a newspaper published in the town of Santa Fe, New Mexico, for not less than successive weeks, you do cause to be notified all persons or parties who may be concerned or who may
7 claim any interest in the above-mentioned property or know or have anything to say why the same should not be decreed to be forfeited to the United States and condemned and sold to answer the payment of said libel; and that you do especially summon the said Henry S. Gillett and John S. Gillett that, together with all other persons interested, to be and appear at the court house in the town of Mesilla in said third judicial district, on the 6th day of November, A. D. 1865, at 10 o'clock a. m., when and where said cause will be heard, and then and there to interpose their claims, and answer said libel and make allegations in that behalf.

Witness the Hon. Joab Houghton, associate justice supreme court Territory of New Mexico and presiding judge of the said
[SEAL.] third judicial district court, and the seal of said court, at Mesilla, N. M., this the 23d day of September, A. D. 1865.

(Signed) SAM'L J. JONES, *Clerk.*

Upon which monition is the following return, which is in words and figures following, to wit:

I hereby certify that I have served the within process by taking possession of the property therein described, and by giving due notice in the Santa Fe Gazette to all persons claiming to appear and interpose their claims and make their allegations in that behalf, on the 1st Monday the 6th day of November, A. D. 1865, at the U. S. district court for the 3d judicial district of New Mexico.

(Signed) ABRAHAM CUTLER,
U. S. Mar hal.

La Mesilla, N. M., Nov. 6, 1865.

8 And afterwards, to wit, at the November term of the United States district court for the third judicial district of the Ter-

ritory of New Mexico, begun and held at the court house in the town of Mesilla, county of Don Ana, and Territory of New Mexico, on the first Monday of November, A. D. 1865, to wit, on the sixth of November, A. D. 1865, and during the term of said court, to wit, on the 11th day of November, A. D. 1865, the said John S. Gillett filed his bond as such claimant; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, John S. Gillett, as principal, and Frank De Ryther and Francis Black, as his securities, are held and firmly bound unto the United States of America in the sum of two hundred and sixty dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of November, in the year of Lord one thousand eight hundred and sixty-five.

Whereas a libel has been filed in the district court of the United States of America for the third judicial district of the territory of New Mexico on the twenty-third day of September, A. D. 1865, in the year of our Lord one thousand eight hundred and sixty-five, by
9 Theodore D. Wheaton, esq., attorney of the United States for the Territory of New Mexico, against lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, and 145, in block No. 33; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., thereon; lot No. 38, in block No. 17, with houses and corrals thereon, situate in the town of Franklin, El Paso county, Texas. Also, a certain house and lot about five hundred yards east from Fort Bliss, El Paso county, State of Texas, situate on the Main Overland road; for reasons and causes set forth and mentioned in said libel, and praying that the same may be condemned as forfeited to the uses in said libel specified.

And whereas also, a claim has been filed in the said court by the said John S. Gillett as owner of said property.

Now therefore, the condition of this obligation is such, that in case the said John S. Gillett shall not support his said claim, if the said John S. Gillett, and the said Frank De Ryther, and Francis Blake, or either of them, or the heirs, executors or administrators of the said John S. Gillett, and the said Frank De Ryther, and Francis Blake, or either of them, shall pay all such costs as by reason of his failing to support his said claim he ought to pay, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) JOHN S. GILLETT. [SEAL.]
(Signed) F. DE RYTHER. [SEAL.]
(Signed) FRANCIS BLAKE. [SEAL.]

10 The penalty and sureties of the above bond are approved by me this, the 11th day of November, 1865.

(Signed) SAM. J. JONES, *Clerk.*

And afterwards, to wit: at the term aforesaid, on the 17th day of November, A. D. 1865, in open court, the said Henry S. Gillett filed his bond as claimant of said property, which said bond is in words and figures folllowing, to wit:

Know all men by these presents that we, Henry S. Gillett and Thos. J. Bull, and Henry Grand Jean, are held and firmly bound to the United States of America, in the sum of two hundred and fifty dollars, lawful money of the said United States, for the payment of which well and truly be made, we bind ourselves and each of us, our and each of heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of November, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas a libel has been filed in the district court of the United States of America, for the third judicial district of the Territory of New Mexico, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-five, by Theodore D. Wheaton, esq., attorney for the United States for the Territory of New Mexico, against lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, and 145, in block No. 33; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., thereon; situate in the town of Franklin, El Paso county, Texas. As also, a certain house and lot about five hundred yards east of Fort Bliss, El Paso county, State of Texas, situate on
11 the Main Overland road. For reasons and causes set forth and mentioned in said libel, and praying that the same may be condemned as forfeited to the uses in said libel specified. And whereas, also, a claim has been filed in the said court by the said Henry S. Gillett as owner of said property.

Now therefore, the condition of the above obligation is such, that in case the said Henry S. Gillett shall not support his said claim, if the said Henry S. Gillett and the said Thomas J. Bull and Henry Grandjean, or either of them, or the heirs, executors and administrators of the said Henry S. Gillett and the said Thomas J. Bull and Henry Grandjean, or of either of them shall pay all such costs as by reason of his failure to support his said claim he ought to pay, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed)	HENRY S. GILLETT.	[SEAL.]
(Signed)	THOMAS J. BULL.	[SEAL.]
(Signed)	H. GRANDJEAN.	[SEAL.]

The penalty and sureties in the above bond are by me approved November 17th, 1865.

(Signed) SAM. J. JONES, *Clerk.*

12 And afterwards, to wit: on the twentieth day of November, 1865, during said term of said court, the marshal filed with the clerk of the court the following information, which is in the words and figures following, to wit:

FRANKLIN, TEXAS, *July* 16, 1864.

Theodore D. Wheaton, esq., U. S. district attorney:

SIR: I have the honor to inform you that I have this day seized the following described real estate and property, belonging to, and being the property of John S. Gillett and Henry S. Gillett, persons who by their disloyalty and treasonable acts have rendered their property and estate, credits, moneys and effects, liable to confiscation under the law approved July 17th, 1862. The following described property and estate in the town of Franklin, El Paso county, State of Texas, and known as lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, and 145, in block No. 33; also, lot No. 16, with houses, corrals, &c., thereon; also lot No. 38, in block No. 17, with houses, corrals, &c., thereon; also, a certain house and lot about five hundred yards east from Fort Bliss, in the county of El Paso, and State of Texas, situate on the Main Overland road, the building previously occupied as a retail grocery and fandango house.

All of which is respectfully submitted for the action of the court that the property may be condemned.

Yours, &c.,

A. CUTLER, *Captor.*

13 And afterwards, to wit: on the day and year aforesaid, during the term of said court, the said marshal filed with the clerk of this court three copies of the Santa Fe Gazette, a weekly newspaper published in the city of Santa Fe, New Mexico, containing a marshal's proclamation, in the words and figures following, to wit:

United States marshal's proclamation.

UNITED STATES OF AMERICA,

3d Judicial District of the Territory of New Mexico, ss:

I, Abraham Cutler, marshal of the United States for the Territory of New Mexico, do hereby give public notice that in the case of

THE UNITED STATES, libellant,

against

THE PROPERTY of Henry S. Gillett and John S. Gillett, to wit: the following described lots situate in the town of Franklin, El Paso county, Texas, viz: Lots Nos. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots Nos. 138, 139, 143, 144. and 145, in block No. 33; also lots Nos. 88, 89, 91, and 92, in block No. 16, with all the houses, corrals, and other buildings thereon. Also a certain house and lot about five hundred yards east Fort Bliss, in the county of El Paso, and State of Texas, situate on the Main Overland road, the building previously occupied as a retail grocery and fandango house.

The same being libelled in the United States district court for the third judicial district of New Mexico Territory, in a case of seizure

and forfeiture for alleged violation of the acts of Congress approved July 13th, 1865, and at other times since that time.

And I hereby give further notice that the time assigned for the return of said warrant and the hearing of this cause, is the first Monday, the 6th day of November, 1865.

14 And I hereby admonish and summon all persons claiming any interest in said property or knowing or having anything to say why the same should not be decreed to be forfeited to the United States, and be condemned and sold to answer the prayer of said libel, that they be and appear before said district court at the court house, in La Mesilla, in said district, on the 6th day of December, A. D. 1865, at 10 o'clock a. m., when, where said cause will be heard; then and there to interpose their claims and answer said libel and make their allegations in that behalf.

La Mesilla, New Mexico, September 2d, 1865.

(Signed) ABRAHAM CUTLER,
U. S. Marshal.

And afterwards, to wit: on the twenty-second day of November, A. D. 1865, during the term aforesaid, the following proceedings were had, to wit:

UNITED STATES OF

vs.

CERTAIN lots, lands, &c., situate in El Paso county, Texas, the property of Henry S. Gillett and John S. Gillett.

This cause came on to be heard on motion of Messrs. Clever and Elkins, proctors for claimants herein, to quash the monition return of the marshal thereon and the publication in this cause, for reasons in said motion stated and set forth, which said motion was argued by counsel on the part of the United States as well as on the part of said claimants. And the court being fully advised in the premises, overruled said motion.

The said claimants, by their proctors, excepted to the opinion of the court in overruling said motion, and a bill of exceptions having been signed by the presiding judge of the court, is ordered to be filed with the proceedings in this case.

15 And afterwards, to wit, on the day and year aforesaid, the said claimants filed their bill of exceptions herein, which said bill of exceptions is in words and figures following, to wit:

THE UNITED STATES

vs.

THE PROPERTY seized upon by the U. S. marshal and libelled as the property of Henry S. Gillett and John S. Gillett, situate in the county of El Paso, State of Texas.

In admiralty, in the district court for the third judicial district of the Territory of New Mexico.—November term, A. D. 1856.

Be it remembered, that on the hearing of this cause the proctors for Henry S. Gillett, one of the claimants of the property herein,

made the following motion, which said motion is in the words and figures following, to wit:

And now appeared in open court Clever & Elkins, proctors of this court and attorneys for claimants, for the purpose of this motion, and no other, and moved the court to quash the monition, return, and publication herein, for the following reasons:

1st. Said monition does not authorize the said marshal to attach the property therein described, as required by law.

2d. The said monition is contrary to the facts set forth in the libel herein, and totally insufficient.

3d. No notice of seizure and libel has been posted up in a public manner, for the space of fourteen days, near the place of seizure, as required by law.

16 4th. That the said United States marshal has not especially summoned and notified the said Henry S. Gillett and John S. Gillett to appear before said court, as commanded to do in said monition.

5th. There has been no order of said court made on said libel authorizing notice to be given of the seizure and libel of the property herein mentioned.

6th. No publication of the cause of libel has been made, as required by law.

7th. The cause of libel contained in the publication herein is a different cause from the one set forth and relied upon in the libel herein.

8th. Said service and publication has not been made by the officer designated by law to make the same.

9th. There is no proof of publication herein, as required by law.

And for other good and sufficient reasons.

(Signed) CLEVER & ELKINS, *Pro Motion.*

Which said motion, after having been argued by the district attorney on the part of the United States and by the proctors for said claimants, was then and there overruled by the court. To the opinion of the court in overruling said motion, by their proctors excepted and asked that this their bill of exceptions be signed and sealed and made a part of the record herein, which is done accordingly.

(Signed) J. HOUGHTON, *Judge.* [SEAL.]

17 And afterwards, to wit, at the term aforesaid, to wit, on the twenty-third day of November, A. D. 1865, the following proceedings were had and held by the court:

UNITED STATES

vs.

CERTAIN HOUSES, lots, and lands, &c., situated in Franklin, El Paso county, Texas, the property of Henry S. Gillett and John S. Gillett.

And now, on this day, came the United States, by her district attorney, Theodore D. Wheaton, esq., and the said Henry S. Gillett in his

own proper person, and offered to file a plea to the jurisdiction of the court, to the filing of which plea the said district attorney, on the part of the United States, objected, as also to any appearance of the said libellee in said cause, which said objection is sustained by the court.

And afterwards, to wit, on the twenty-fourth day of November, 1865, during the said term of said court, the following proceedings were had:

UNITED STATES

vs.

CERTAIN HOUSES, lots, &c., the property of Henry S. Gillett and John S. Gillett.

And now, on this day, comes John S. Watts, esq., proctor for claimants in this cause, and filed the claims of Robert Campbell and others to the property libelled herein.

18 It is therefore ordered that testimony be taken on the part of the United States, as also on the part of the said claimants, before the commissioners appointed by the court to take testimony.

And afterwards, to wit, during the term of said court, to wit, on the 2d day of December, A. D. 1865, the following testimony, taken before the commissioners appointed for that purpose, was read in open court, which testimony being in writing is in words and figures following, to wit:

U. S. district court, November term, 1865.

Territory of New Mexico, 3d Judicial District:
UNITED STATES OF AMERICA,

UNITED STATES, libellant,

vs.

Lots Nos. 146, 147, 148, 149, 150, 151, and 152 in block No. 32; lots Nos. 138, 139, 143, 144, and 145 in block No. 33; also lots No. 88, 89, 91, and 92 in block No. 16, with all the houses, corrals, and other buildings thereon; also a certain house and lot about five hundred yards east from Fort Bliss, on the Main Overland road. All of which houses and lots are situated in the town of Franklin, and county of El Paso, and State of Texas, libelled as the property of Henry S. Gillett and John S. Gillett.

Testimony of witnesses in the above-entitled case.

Henry Corlieu, being by me first duly sworn, desposes and says:

I have known Henry S. Gillett and John S. Gillett, the libellees in this case, since about 1851. I met them frequently during the late rebellion in the United States. Judged from their general

19 conversation and talk that they were in favor of the rebellion. They were citizens of the United States.

(Signed) HENRY CARLIEU.

David Sperry, being duly sworn, deposed as follows:

I have been acquainted with the libellees since 1851 or 1852. They were merchants in the town of Franklin, El Paso county, Texas, at the breaking out of the late rebellion. They always talked favorable to the rebellion, and Henry Gillett left El Paso county, Texas, with the Texans, under the command of the rebel general Henry H. Sibley. John S. Gillett left shortly after, and went south to San Antonio, Texas. They were citizens of the United States. I know that they owned, or claimed to own, the property described in the libel in this case, and that the said property is situate in the county of El Paso, and State of Texas.

D. SPERRY.

W. W. Mills, being duly sworn, deposes as follows:

I have known the libellees in this case since 1859. They were merchants in the town of Franklin, El Paso county, and State of Texas, at the breaking out of the rebellion. They were among the most earnest and active advocates and supporters of the rebellion, both before and after the confederate forces came up into El Paso county. I saw them assist to take forcibly from the post office at Franklin, in said county and State, the United States mail for the purpose of intercepting and destroying orders to United States officers in 1861. Upon one occasion Henry S. Gillett showed me a rope in the United States post office and told me that they had got that rope to hang just such Union men as I was, and that I had better look out. I have seen them (the libellees) assist in raising the secession flags and hang the late President of the U. S. in effigy. This was in 1861. Said Henry S. Gillett went south with Sibley's brigade, and John S. Gillett went soon after. They owned the property described in the libel, or always claimed to own it, and the same is situate in El Paso county, and State of Texas. They were citizens of the United States.

W. W. MILLS.

I, N. P. Bacon, United States commissioner for the third judicial district of the Territory of New Mexico, hereby certify that the foregoing testimony was taken before me at my office in the town of Mesilla, in said district, on the 27th day of November, 1865, and that the same was reduced to writing by me; and that I first swore the said witnesses to testify the truth, the whole truth, and nothing but the truth in the above-entitled case then on hearing before me.

N. P. BACON, *U. S. Commissioner*.

Mesilla, N. M., November 27, 1865.

And afterwards, to wit, during the term of said court, to wit, on the second day of December, A. D. 1865, the following decree was rendered by said court, which appears of record, and which said decree is in the words and figures following, to wit:

21 UNITED STATES OF AMERICA,
Third Judicial District, Territory of New Mexico:

UNITED STATES
vs.

LOTS No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 138, 139, 143, 144, and 145, in block No. 33; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., thereon, situate in the town of Franklin, county of El Paso, State of Texas; also, a certain house and lot about five hundred yards east from Fort Bliss, El Paso county, Texas, situate on the Main Overland road—the property of Henry S. Gillett and John S. Gillett.

This cause came on to be heard upon the libel exhibits and testimony; and it appearing to the court that although monition had duly issued and proclamation made and notice duly given at the door of the court house, calling upon all persons having aught to say why the property and estate described in said libel should not be condemned as forfeited to the United States to appear, that they might be heard, and no claimants having appeared, and the court having heard the testimony in the case, and being more fully advised in the premises, it is ordered, adjudged, and decreed that the property described in said libel in said case, to wit, lots No. 146, 147, 148, 149, 150, 151, and 152, in block No. 32; lots No. 88, 89, 91, and 92, in block No. 16, with houses, corrals, &c., situated thereon; lot No. 38, in block No. 17, with houses and corrals situated thereon, situate in the town of Franklin, El Paso county, State of Texas; also, a certain house and lot about five hundred yards east from Fort Bliss, in the county of El Paso, State of Texas, situate on the Main Overland road, be condemned as forfeited to the United States, and that the same be sold at public sale at the public plaza of the town of Franklin, in the county of El Paso, Texas, by the marshal of the United States for the district of New Mexico, notice having been first given by printed
22 or written handbills at least two weeks before the day of sale, posted in public places in the town of Franklin and San Elizario, Texas, and La Mesilla and Las Cruces, New Mexico, describing the property to be sold and the time and place of sale; that a deed be made by said marshal of the real estate thus sold to the purchaser; and that after the deduction and payment of all fees and costs accruing in said case, one half of the proceeds of said sale remaining shall be paid by the said marshal to the informant herein, Abraham Cutler, and the other half thereof shall be paid by the said marshal, as soon as may be after said sale, into the United States depository at Santa Fe, New Mexico, subject to and to abide by the order of the court in the premises at our next regular term.

J. HOUGHTON,
Associate Justice Supreme Court of New Mexico, and Presiding Judge of the Third Judicial District.

And now come Clever and Elkins, esqs., attorneys for libellees and claimants herein, and ask the court for an appeal to the supreme

court in this cause. To their appearance for this purpose the United States district attorney objected; which objection was sustained by the court.

And afterwards, to wit, on the 6th day of December, A. D. 1865 the following proceedings were had and held in said court, to wit:

23 ROBERT CAMPBELL & Co., *et als.*, claimants, *vs.* H. S. & J. S. GILLETT. } Confiscation.

And now come the claimants, Robert Campbell & Co. *et als.*, by John S. Watts, esq., their attorney, and the United States, by T. D. Wheaton, esq., her attorney; and the evidence in this cause being closed, and the cause is now submitted to the court for hearing after argument. The court being sufficiently advised in the premises, does now disallow said claims, and direct the same to be dismissed at the costs of the claimants, to be taxed at dollars and cents; and on application of the claimants in this cause, an appeal is granted upon the execution of an appeal bond in the sum of five hundred dollars, to the satisfaction of the court.

And on the 24th day of November, A. D. 1865, John S. Watts, esq., attorney for claimants herein to the proceeds of the property libelled herein, filed in open court the following claims, which are in words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Dona Ana:

In the United States district court for the third judicial district, in and for the county of Dona Ana, in the Territory of New Mexico.

At the November term of said court, 1865.

To the Hon. Joab Houghton, associate justice of the supreme court of the Territory of New Mexico, and presiding judge of the third judicial district in an for Dona Ana county, in the Territory of New Mexico:

24 At the November term of said court. 1865, your petitioners, Robert Campbell and Hugh Campbell, a firm doing business under the name of Robert Campbell & Co., loyal citizens of the United States, and residents of Saint Louis, in the State of Missouri; Geo. H. Gill, a loyal citizen of the United States, resident of the city of Saint Louis, in the State of Missouri; William F. Enders, a loyal citizen of the United States, resident of the city of Saint Louis, in the State of Missouri, and John W. Bigelow, a loyal citizen of the United States, resident of the city of Boston, Massachusetts, a firm doing business in Saint Louis, under the name and style of William F. Enders & Co.; William S. McKnight and James W. Richardson, loyal citizens of the United States, residents of the city of Saint

Louis and State of Missouri, doing business under the name and style of W. S. McKnight & Co., would respectfully represent to the court that they are creditors of John S. Gillett and Henry S. Gillett, residents of El Paso county, State of Texas, and doing business under the name and style of H. S. & J. S. Gillett, and John S. Gillett and Robert H. Cochran, doing business in the town of Mesilla Dona Ana, county of Dona Ana, and Territory of New Mexico. And the evidences of indebtedness consist of promissory notes executed to your petitioners, as follows, to wit:

Note of H. S. J. S. Gillett to Robert Campbell & Co., dated Saint Louis, March 15th, 1860, for the sum of six thousand one hundred and eighty-one 79-100 dollars, payable in six months after date, with interest from maturity at the rate of ten per cent. per annum.

Note of Gillett & Cochran, dated Saint Louis, March 15th, 1860, for the sum of four thousand seven hundred and fifteen and 77 cents,
25 payable six months after date to Robert Campbell & Co., with interest at the rate of ten per cent. per annum after maturity, upon the first of which notes payments have been made to the amount of one thousand eight hundred and twenty-one dollars six cents, as will more fully appear by a copy of said notes hereby filed as a part of this petition, marked as Exhibits A and B herein.

Note to George H. Gill, dated St. Louis, March 24, 1860, for the sum of five hundred and fifty-six 96-100 dollars, payable six months after date, with interest at the rate of ten per cent. per annum after maturity.

Note of Gillett & Cochran to George H. Gill, dated St. Louis, March 24th, 1860, for the sum of four hundred and sixty-six 95-100 dollars, payable in six months after date, with interest at the rate of ten per cent. per annum from maturity, all of which will more fully appear by reference to a copy of said notes, hereby made a part of this petition and marked as Exhibits C and D herein.

Note of Gillett & Cochran to W. F. Enders & Co., dated St. Louis, March 15th, 1860, for the sum of two thousand and forty-three 99-100 dollars, payable in six months after date, with interest at the rate of ten per cent. per annum after maturity.

Note of H. S. & J. S. Gillett to William F. Enders & Co., dated St. Louis, March 23d, 1860, for the sum of two thousand and forty-one 8-100 dollars, payable six months after date, with interest at the rate of ten per cent. per annum after maturity; upon which said note there is a credit of one hundred and thirteen 72-100 dollars, all of which will more fully appear by reference to a copy of said notes, hereby made a part of this petition, marked as Exhibits E and F herein.

26 Note of Gillett & Cochran to W. S. McKnight & Co., dated St. Louis, Mo., March 15th, 1860, for the sum of one thousand six hundred and fifty-seven 91-100 dollars, payable six months after date, with interest at the rate of ten per cent. per annum after maturity, on which said note is a credit of one thousand dollars, Jan. 6, 1862.

Note of H. S. & J. S. Gillett to W. S. McKnight & Co., dated St.

Louis, Mo., March 23d, 1860, for the sum of one thousand six hundred and eleven dollars 51 cents, payable six months after date, with interest at the rate of ten per cent. per annum after maturity, on which said note is a credit, December 31, 1861, of one hundred and ninety-five 50-100 dollars, and June 28, 1861, a credit of fourteen hundred 1-100 dollars, all of which will more fully appear by reference to a copy of said notes marked G. & H. herein.

Your petitioners would further state to this court that no part of the amounts due on the interest thereon, except as above stated, has ever been paid to said petitioners, and the sum is still due and owing.

Your petitioners would further state that all the property of the said Gillett, consisting of houses, lots, and lands, situate in El Paso county, Texas, has been libelled by the United States, and is now in process of confiscation in the United States district court for the third judicial district, in Dona Ana county, Territory of New Mexico.

Your petitioners would further state that since the maturity of said notes, there have been no courts in El Paso county, Texas, in which the loyal citizens of the United States could sue, obtain judgment, or get execution for said sums of money so due and owing, nor have any such yet been established.

Your petitioners further state to the court that, as loyal and bona fide creditors of said H. S. & J. S. Gillett, and said Gillett & Cochran, they claim to the extent of their debts, due and owing,
27 prior to the passage of said act of confiscation. That said petitioners have a legal and equitable right to the extent of their debts to the payment out of the property of said Gilletts & Cochran, and the United States has only a right to take whatever surplus may , if any, after the payment of said debts.

Your petitioners ask that they be permitted to establish their claims against said Gilletts & Cochran, and that a decree be made for the payment of the same out of the proceeds of any property confiscated and sold, in such manner as may be consistent with equity and justice.

All of which is submitted.

JOHN S. WATTS,
Att'y for Claimants.

And afterwards, to wit, on the 24th day of November, A. D. 1865, John S. Watts filed in open court copies of notes of H. S. & J. S. Gillett and Gillett & Cochran to claimants herein, which are in words and figures following, to wit:

Exhibits A and B.

$1,705 77-100. SAINT LOUIS, MO., *March 15th*, 1860.

Six months after date we, the subscribers, residing at La Mesilla, in Dona Ana county, N. M., promise to pay to the order of Robert Campbell forty-seven hundred and fifteen 77-100 dollars, for value received, negotiable and payable, without defalcation or discount, at the counting-room of Robert Campbell & Co., St. Louis, Mo., with interest from maturity, at the rate of ten per cent. per annum.

GILLETT & COCHRAN.

$6,181 79. SAINT LOUIS, *March 15th*, 1860.

Six months after date we, the subscribers, residing in El Paso, in El Paso county, Texas, promise to pay to the order of Robert Campbell sixty-one hundred and eighty-one 79-100 dollars, for value received, negotiable and payable, with defalcation or discount,
28 at the counting-room of Robert Campbell & Co., St. Louis, Mo., with interest from maturity, at the rate of ten per cent. per annum.

H. S. & J. S. GILLETT.

May 25, 1860	$565 10
Sept. 29, 1860	100 00
Sept. 29, 1860	152 96
Nov. 20, 1860	235 45
Dec. 31, 1860	667 55

$556 76-100. ST. LOUIS, *March* 24, 1860.

Six months after date we, the undersigned, of , county of , State of , promise to pay to the order of Gill & Brother, a firm composed George H. Gill, five hundred and fifty-six 76-100 dollars, for value received, negotiable and payable without defalcation or discount, with interest at the rate of ten per cent. per annum from maturity.

H. S. & J. S. GILLETT.

Exhibits C and D.

$466 93-100. ST. LOUIS, *March* 24, 1860.

Six months after date we, the undersigned, of , county and State of , promise to pay to the order of Gill & Brother, a firm composed of Geo. H. Gill, four hundred and sixty-six and 93-100 dollars, for value received, negotiable and payable without defalcation or discount, with interest at the rate of ten per cent. per annum from maturity.

GILLETT & COCHRAN.

Exhibits E and F.

$2,043 99-100. SAINT LOUIS, MO., *March* 15, 1860.

Six months after date we, the subscribers, of Mesilla, county of Dona Ana, Territory of New Mexico, promise to pay to the order of William F. Enders & Co., which firm is composed of William F. Enders, St. Louis, Mo., John M. Bigelow, Boston, Mass., two thousand and forty-three 99-100 dollars, for value received, negotia-
29 ble and payable without defalcation or discount, with ten per cent. interest from maturity until paid.

GILLETT & COCHRAN.

Exhibits G and H.

$2,741 8-100. St. Louis, Mo., *March* 23*d*, 1860.

Six months after date we, the subscribers, of El Paso, county of El Paso, State of Texas, promise to pay to the order of William F. Enders & Co., which firm is composed of William F. Enders, St. Louis, Mo., and John M. Bigelow, Boston, Mass., twenty-seven hundred and forty-one 8-100, for value received, negotiable and payable without defalcation or discount, with *with* ten per cent. interest from maturity until paid.

H. S. & J. S. GILLETT.

$113 72 cr. by balance of draft of $275, rec'd May 8, '60.

$1,659 91-100. St. Louis, Mo., *March* 15*th*, '60.

Six months after date we, the subscribers, of Mesilla, county of Dona Ana, and Territory of New Mexico, promise to pay to the order of W. S. McKnight & Co., a mercantile firm composed of W. S. McKnight and James W. Richardson, sixteen hundred and fifty-nine and 91-100 dollars, for value received, negotiable and payable without defalcation or discount, at and bearing interest at the rate of ten per cent. from maturity.

GILLETT & COCHRAN.

JAN. 6, 1862.

Received one thousand dollars.

J. RICHARDSON.

$1,611 1-100. St. Louis, Mo., *March* 23, 1860.

Six months after date we, the subscribers, H. S. Gillett and John S. Gillett, of El Paso, county of El Paso, and State of Texas, promise to pay to the order of W. S. McKnight & Co., a mercantile firm composed of William S. McKnight and James W. Richardson, sixteen hundred and eleven 1-100 dollars, for value received, negotiable and payable without defalcation or discount, at and bearing interest at the rate of ten per cent. from maturity.

H. S. & J. S. GILLETT.

30 Dec. 31, '61. Received one hundred and ninety-five 50-100 dollars. June 28, '61. Received fourteen hundred and sixteen 7-100 dollars as principal; seventy-three 24-100 dollars on account of interest accumulated to this date. Bal. of interest due, 73 24.

And afterwards, to wit, on the 6th day of December, A. D. 1865, John S. Watts, esq., attorney for claimants herein to the proceeds of the property libelled herein, filed with the clerk of this court the following affidavit, which is in words and figures following, to wit;

Claim for property seized for confiscation.

ROBERT CAMPBELL & CO. *et als. vs.* THE UNITED STATES.

TERRITORY OF NEW MEXICO, *County of Dona Ana:*

And now comes John S. Watts, the attorney of claimants in this case, and upon oath says that the appeal in the above-entitled cause is not taken for the purpose of vexation and delay, but because the affiant believes that appellants are aggrieved by the judgment and decision of the court in this case.

(Signed) JOHN S. WATTS.

Subscribed and sworn to before me this, the 6th day of December, 1865.

(Signed) SAM. J. JONES, *Clerk.*

And afterwards, to wit, on the 6th day of December, A. D. 1865, John S. Watts, esq., attorney for claimants herein to the proceeds of the property libelled herein, filed with the clerk of this court the following appeal bond, which is in words and figures following, to wit:

31 Know all men by these presents, that we, John S. Watts and William W. Mills, are held and firmly bound unto the United States of America in the sum of five hundred dollars, for the payment of which sum well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators firmly by these presents.

Signed and sealed this 6th day of December, 1865.

The condition of the above obligation is such, that whereas Robert Campbell & Co. and others have this day appealed to the supreme court of the Territory of New Mexico from the decision of the United States district court for the 3d judicial district, rendered against them and in favor of the United States, upon a claim for the proceeds of property seized by the United States for confiscation. Now, if the said Robert Campbell & Co. *et als.* shall prosecute their appeal with due diligence to a decision in the supreme court, and in case the judgment appealed from be affirmed or the appeal dismissed, and perform the judgment of the district court, and pay all costs and damages that may be adjudged against them in said appeal, then this bond is void, else good and valid in law.

(Signed) JOHN S. WATTS. [SEAL.]
(Signed) W. W. MILLS. [SEAL.]

Approved.

J. HOUGHTON, *Judge 3d Judicial District.*

32 In district court of the United States for the third judicial district of the Territory of New Mexico.

UNITED STATES OF AMERICA,
Territory of New Mexico, 3d Judicial District:

I, Sam'l J. Jones, clerk of said court, do hereby certify that the foregoing pages is a full, true, and perfect copy of the record,

proceedings, and papers on file in the above-entitled cause, as now remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Mesilla, N. M., this, the 20th day of December, A. D. 1865.

(Signed) SAM. J. JONES, *Clerk.* [SEAL.]

Pleas begun and held in the supreme court of the Territory of New Mexico at the January term, A. D. 1866, at the city of Santa Fe, New Mexico.

Among the proceedings of said court at the above term on the first day of January, A. D. 1866.

Present: Hon. Kirby Benedict, chief justice; Hon. Sidney A. Hubbell, associate justice; Hon. Joab Houghton, associate justice; Theodore D. Wheaton, U. S. district attorney for said Territory;
33 Jose D. Sena, esq., sheriff of Santa Fe county; Samuel Ellison, clerk of said court.

Appeal.

Error to the district court of Dona Ana county, 3d judicial district.

ROBERT CAMPBELL & Co. *et al.* *vs.* THE UNITED STATES. } Confiscation.

And now comes the plaintiffs in error by John S. Watts, esq., their attorney, and with leave of the court now file herein the assignment of error upon the part of the plaintiffs in error in this cause.

The assignment of errors in words and figures, to wit:

In the supreme court of the Territory of New Mexico, January term, 1866.

THE UNITED STATES *vs.* THE PROPERTY OF H. S. and J. S. GILLETT.

The plaintiffs in error, Robert Campbell & Co. *et al.*, claimants in the court below, by John S. Watts, their attorney, now assign upon the record in this case the following errors, to wit:

1st. The court below erred in dismissing the claim of the claimants and rendering judgment against said claimants, when, in fact, the judgment of the court below should have been in favor of the said claimants and against the United States.

2d. The claimants were legally entitled to the proceeds of
34 the property confiscated as loyal creditors prior to the passage of the confiscation act; and the proceeds of said property so ordered to be confiscated should have been decreed to the claimants, but was erroneously decreed to the United States in the court below.

For which reasons, and many others apparent on the face of the record, the plaintiffs in error, claimants in the court below, ask that

the judgment and proceedings of the court below be reversed and set aside, and that a decree be made allowing the claims of said claimants, and ordering and decreeing the payment of the same out of the proceeds of the sale of the property decreed to be confiscated in this case. All of which is submitted to the court.

(Signed) JOHN S. WATTS,
Att'y for Robert Campbell and Co., Claimants in the Court below.

And be it further remembered that on the 2d day of January, A. D. 1866, being the second day of said term of *said term of* said court, the following proceedings were held and had, to wit:

Confiscation.—Appeal to district court of Dona Ana county, 3d judicial district.

ROBERT CAMPBELL & Co. *et al. vs.* THE UNITED STATES.

And now again come the plaintiffs in error on this day, by John S. Watts, esq., their attorney, who, now with the leave of the court here, files his brief in this cause.

35 And be it remembered furthermore that on this 2d day of January, A. D. 1866, being the second day of said term of said court, said brief was filed with the clerk of said court, which is in words and figures, to wit:

Confiscation.—Appeal to 3d judicial district, Dona Ana county.—Brief of plaintiffs in error.—Facts of the case.

ROBERT CAMPBELL & Co. *vs.* THE UNITED STATES.

Prior to the present rebellion, Henry S. and John S. Gillett were merchants doing an extensive business in the town of El Paso or Franklin, Texas, and made their purchases of good for cash and on time of the merchants of St. Louis, and amongst others of Robert Campbell & Co. and others, the plaintiffs in error in this case. The Gilletts adhered to the rebel cause, assisted to carry the State of Texas out of the Union. In 1860, the notes due from the Gilletts to Campbell & Co. and others, but the State of Texas having gone out of the Union, there was no possibility of enforcing the collection of said debts by suit at law, or seizure of the property of said Gilletts. About the 6th of July, 1862, the rebel troops were drawn out of Franklin, Texas, and the place occupied by the United States troops. The United States troops being in possession, the United States marshal for New Mexico seized all the property of the Gilletts, situate in El Paso or Franklin, Texas, and instituted on the part of the United States, in the United States district court for the 3d judicial district, proceedings for the confiscation

36 and sale of said property. The proceedings instituted were based upon the confiscation act of 17th July, 1862. The libel came on to be tried at the November term, 1865, of the United States district court for the 3d judicial district in the Territory of New Mexico. Pending the proceedings for the confiscation of the

property of said Gilletts, the plaintiffs in error, Robert Campbell & Co. and others, filed in said cause a petition, setting forth their loyalty; that they were bona fide creditors of said Gilletts to the amount of over twenty thousand dollars; that the debts were evidenced by the existence of promissory notes, dated and due prior to the passage of the confiscation act of July 17, 1862, and all of said allegations being duly proved, the said plaintiffs in error asked the court below to decree to them the proceeds of said property of the Gillitts of confiscated and sold to the amount of their debts due and owing prior to any acts of treason upon the Gilletts, and that only the surplus, after payment of honest debts to loyal creditors, ought to be or was liable to confiscation by the United States, and appropriable to its use; upon these facts the court below refused to allow the claims of the plaintiffs in error, and dismissed the claim at their costs, and decreed to the United States, and the United States marshall, all the proceeds of the sale of the property seized and decreed to be confiscated and sold. From this decision the plaintiffs in error appealed, and it is to reverse this decision that this writ
37 of error is now prosecuted.

Legal proposition.

If the bona fide due loyal citizens of the United States, prior to the rebellion, cannot be collected of them, then the *the* judgment of the court below is right, if such debts can and ought to be collected, then the judgment of the court below is erroneous and ought to be reversed.

It is our purpose to discuss briefly this proposition.

1st. A statute should be construed in such a manner as to effect the object intended, and to carry out the spirit and intent of the act. The object of the confiscation act was to weaken the rebellion by taking away from rebels their entire property and to strengthen the United States by putting that property into its use as additional means to aid in putting down the rebellion. The spirit and intent hath this extent no more.

2d. A statute ought to be construed so as to perpetrate no injustice, and do no great and obvious wrong. Prior to the rebellion the citizens of the rebel States were indebted to the citizens of the loyal States in the sum of over two hundred millions of dollars. One of the strongest inducements of the loyal people of the United States to spend their money and pour out their blood to suppress this rebellion was to be able to assert and recover their debts. For the government to now take all the property of these debtors, and appropriate it to its own use without payment of the loyal
38 citizens what is due them, would be gross injustice and obvious wrong, and would be, in effect, confiscation of two hundred millions of the property of loyal citizens. No such construction of the statute ought or should stand.

The government of the United States a rebel civilly dead and constitutes itself the administrator of his estate, and residuary legatee.

It thus becomes the duty of the United States to, first, pay costs and expenses of seizure out of the rebel property. Second. Just debts to loyal citizens due and owing prior to any acts of treason by the rebel. 3d. To decree to the United States as residuary legatee the remainder of the property of the rebel. All of which is respectfully submitted to the court.

(Signed) JOHN S. WATTS,
Att'y for Plaintiffs in Error.

And be it further remembered, that on the 2d day of January, A. D. 1866, being the second day of said term of said court, the following joinder in error was filed in the office of the clerk of said court, being in words and figures as follows, to wit:

Confiscation.

ROBERT CAMPBELL & Co. *vs.* THE UNITED STATES.

And now comes T. D. Wheaton, United States district attorney, and says that there is no error in the judgment and proceedings of the United States district court for the 3d judicial district in and for Dona Ana county.

(Signed) WHEATON,
For the U. S.

39 And be it further remembered, that upon the 2d day of January, A. D. 1866, being the second day of said term of said court, the following agreement of counsel was filed, being in words and figures, to wit:

Confiscation.

ROBERT CAMPBELL & Co. *et al. vs.* THE UNITED STATES.

It is admitted by T. D. Wheaton, United States district attorney, that upon the trial of this case in the court below, the loyalty of the claimants, Robert Campbell & Co. *et al.*, was duly proved, also the executions of the notes of which copies are found in the record, was duly proven, and said notes exhibited to the court, and said facts being omitted in the record, this statement is signed and this admission is made to supply said omission.

January 2d, 1866.

(Signed) THEODORE D. WHEATON,
U. S. Dist. Attorney.

And be it further remembered, that on this 2d day of January, A. D. 1866, being the second day of said term of said , the following proceedings were had and held, to wit:

Confiscation appeal.

Error to district court of Dona Ana county.

ROBERT CAMPBELL & Co., *et al.*, *vs.* THE UNITED STATES.

This day came again the parties by their counsel, and it is admitted by Theodore D. Wheaton, esq., United States district attorney, that upon the trial of this cause in the court below, the loyalty of the plaintiffs, Robert Campbell & Co. *et al.*, was duly proved.
40 Also the execution of the notes of which copies are found in the record, was duly proved, and said notes exhibited to the court, and said facts being omitted in the record, this admission is made to supply said omission.

And now comes Theodore D. Wheaton, esq., United States district attorney, as aforesaid, and says there is no error in the judgment and proceedings of the United States district court for the 3d judicial district, in and for Dona Ana county, in this cause.

And be it further remembered, that on this 3d day of January, A. D. 1866, being the third day of said term of said court, the following proceedings were had and held, to wit:

THE PROPERTY OF HENRY S. AND JOHN S. Gillett, appellants, *vs.* THE UNITED STATES, appellees. } *Appeal from El Paso county, Texas.*

and

ROBERT CAMPBELL & Co., *et al.*, appellants, *vs.* THE UNITED STATES. } *Appeal from El Paso county, Texas.*

And now on this day comes the appellants, Robert Campbell & Co. *et al.*, by their counsel John S. Watts, esq., as also the other parties in these causes by their counsel, and the cause having been argued by said Watts, and the other counsel not now being prepared for the argument of this cause, it is continued until another day of this term.

(Signed) KIRBY BENEDICT.
(Signed) SYDNEY A. HUBBELL.
(Signed) J. HOUGHTON.

41 And be it further remembered, that on the 4th day of January, A. D. 1866, being the fourth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

THE PROPERTY OF HENRY S. AND JOHN S. Gillett, *et al.*, appellants,
vs.
THE UNITED STATES, appellee.

And now comes Theodore D. Wheaton, esq., attorney for the United States herein, and John S. Watts, esq., attorney for the appellants, Robt. Campbell & Co. *et al.*, and with the assent of the said John S. Watts, the said United States district attorney now moves the court for leave to withdraw his joinder in error in this cause, and for a continuance of the same, upon the ground that th record in this cause was not filed ten days before the commencemei of this court, and upon the ground that the appeal herein was n *was not* taken thirty days before the commencement of this court, a said leave to withdraw said joinder in error was refused, and the m tion to continue said cause was overruled, to which opinion of th court the United States district attorney excepts.

And on the same day the following proceedings were had and hel to wit:

Appeal from Dona Ana county.

THE PROPERTY OF HENRY S. AND JOHN S. Gillett, appellants,
vs.
THE UNITED STATES, appellees.

42 This cause came on again to be heard, and was argued l John S. Watts, esq., attorney for the appellee, and by S. Elkins, esq., and C. P. Clever, esq., for the appellants, and the not being sufficient time to consider the argument on this day, th cause is continued until to-morrow.

And be it further remembered, that on this 4th day of Januar A. D. 1866, being the 4th day of said term of said court, the follo ing assignment of errors was filed with the clerk of said court, words and figures, to wit:

Assignment of errors.

In Supreme Court, January term, A. D. 1866.

UNITED STATES

vs.

LOTS No. 146, 147, 148, 149, 150, 151, and 152, in block No. 3 lots No. 138, 139, 143, 144, in block No. 33; lots No. 88, 89, 91 and 92, in block No. 16, with houses, corrals, &c., thereon, situate i the town of Franklin, El Paso county, State of Texas; also a certai house and lot, about five hundred yards east from Fort Bliss, El Paso county, Texas, situate on the Main Overland road, the property of Henry S. Gillett and John S. Gillett.

The libellees and claimants, Henry S. Gillett and John S. Gillett,

to the property herein, by their attorneys, assign for error the following:

1st. The court erred in entertaining jurisdiction over the property in question.

2d. The court erred in overruling the motion to quash the
43 monition, return and publication.

3d. The court erred in refusing to allow said libellees and claimants to file a plea to the jurisdiction of said court.

4th. The court erred in refusing to allow the said libellees and claimants to file a claim to said property.

5th. The court erred in refusing to sign a bill of exceptions.

6th. The court erred in refusing to allow an appeal to said libellees to the supreme court.

7th. The court erred in refusing to the libellees the right to show cause why their property was not forfeited.

8th. The court erred in refusing to allow the libellees the right to adduce evidence in his own behalf.

9th. The court erred in refusing to the libellees the right of trial by jury.

10th. The court erred in decreeing one half of the proceeds of the sale of said property to the captor.

11th. The court erred in proceeding as a court of admiralty.

(Signed) CLEVER, ASHURST & ELKINS,
For Libellees.

44 And be it further remembered, that on this 5th day of January, A. D. 1866, being the fifth day of said term of said court, the following proceedings were had and held, being in words and figures, to wit:

Appeal from Dona Ana county.

PROPERTY OF HENRY S. AND JOHN S. GILLETT, appellants,
vs.
THE UNITED STATES, appellees.

This cause came on this day to be again heard, and was argued by John S. Watts, esq., and Theodore D. Wheaton, esq., on the behalf of the appellees, and by M. Ashurst, esq., on behalf of the appellants, and the court not being advised what judgment to render, takes time to consider of the same until to-morrow.

And be it further remembered, that on the 5th day of January, A. D. 1866, the following brief was filed with the clerk of said court, being in words and figures, to wit:

In the supreme court of the Territory of New Mexico, January term, A. D. 1866.

THE UNITED STATES.

vs.

PROPERTY seized upon by the U. S. marshal, and libelled as the property of Henry S. Gillett and John S. Gillett, situate in El Paso county, State of Texas.

This is a case instituted by libel, on the part of the United States against certain real estate situate in El Paso county, Texas,
45 for the purpose of condemnation and forfeiture to the government of the said United States for alleged offences committed by said libellees against said government during the late rebellion.

The monition and libel in said cause shows that the real estate in question is not situated in the third judicial district of the Territory of New Mexico, but within the county of El Paso, State of Texas.

The court could possibly have had no jurisdiction over the real estate in question for purposes of confiscation and forfeiture, for the reason that said real estate is situate out of the third judicial district of the Territory of New Mexico. In support of which the following authorities are cited:

See U. S. Statutes at Large, pg. 335, vol. X.
See U. S. Statutes at Large, pg. 221, vol. OXI.
See U. S. Statutes at Large, pg. 591, vol. OOXII.
See U. S. Statutes at Large, pg. 761, vol. OOX1I.
See U. S. Statutes at Large, pg. 165, vol. IX.
See organic act of the Territory of New Mexico.

Construction of statutes.

See 3d vol. Cond. Rep., 497.
See 1 vol. Cond. Rep., 337, 340, 355, notes.
See 1 vol. Cond. Rep., 379.
See 4 vol. Cond. Rep., 59, notes 62, whole case 595.
See 2 vol. Cond. Rep., 540.
See 1 vol. Cond. Rep., 408.
See amendment to the Constitution of the United States, art. 6.
See Bowv. Law Dictionary, pg. 291.
1. Bl. Corw. 299.

46 Court had no jurisdiction, because martial law existed in the county of El Paso, State of Texas, by virtue of the proclamation of the President of the United States, August 16, 1861.

And be it further remembered, that on the 6th day of January, A. D. 1866, being the sixth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

PROPERTY OF HENRY S. AND JOHN S. GILLETT, appellants,
vs.
THE UNITED STATES, appellee.

And now comes the United States by T. D. Wheaton, esq., district attorney, and moves the court to dismiss the appeal of the said Gilletts in this cause, for the reason that there was no appearance of said Gilletts in the court below, and that the judgment against them in that court was by default, which motion is overruled by the court.

And be it remembered, that on the same day above mentioned the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

THE PROPERTY OF HENRY S. AND JOHN S. Gillett, appellants.
vs.
THE UNITED STATES, appellee.

And now, on this day, again came the parties by their counsel, and this cause having been on a former day argued by counsel upon both sides, and submitted to the court for its judgment in the premises, therefore, in consideration of the premises, it is ordered, adjudged
47 and decreed by the court that the judgment and decree in the court below be, and hereby is, reversed and annulled, and this cause be remanded to the district court for the county of Dona Ana, to be by the said court dismissed for the want of jurisdiction in said court over the real estate in county of El Paso, Texas, libelled in this cause, at the costs of the United States in the district court and in this court.

The judgment of the court was announced by Benedict, chief justice, Justice Houghton dissenting.

Leave is hereby given to each of the judges to file their separate written opinions in this case during the present term or in vacation.

And be it further remembered, that on the 16th day of January, A. D. 1866, being the fourteenth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

THE PROPERTY OF HENRY S. AND JOHN S. Gillett, appellants,
vs.
THE UNITED STATES, appellee.

And now comes Theodore D. Wheaton, esq., United States district attorney, and files an affidavit herein, showing the property in controversy in this cause to be of value exceeding one thousand dollars,

and thereupon prays an appeal to the Supreme Court of the United States, which appeal is hereby granted.

48 The affidavit in words and figures following, to wit:

Confiscation appeal.

In the supreme court, New Mexico, January term, A. D. 1866.

THE PROPERTY OF HENRY S. AND JOHN S. Gillett,
vs.
THE UNITED STATES.

Affidavit of John F. Stone, states that the property in question, in the above named cause, exceeds the value of one thousand dollars, to wit: is of the value of two thousand dollars.

(Signed) JOHN F. STONE.

Sworn to and subscribed in open court, January 16, 1866.

KIRBY BENEDICT,
Chief Justice of said Territory and Presiding Judge of said Court.

I, William M. Gwynne, clerk of the above court, do hereby certify that the above pages is a correct, true, and perfect transcript from the record of the above court in the said cause, which said record is now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Santa Fe, New Mexico, this 13th day of August, A. D. 1866.

[SEAL.] W. M. GWYNNE, *Clerk.*

Filed 29th August, 1866.

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